



O.A.Nos.46 & 47 of 2023

in

C.S.No.11 of 2023

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SENTHILKUMAR RAMAMOORTHY, J.

By email dated 30.12.2022, the plaintiff was informed of his suspension. Such suspension is the subject of the suit and the interim application presented by the plaintiff. In the suit, the plaintiff prays for a declaration that the order of suspension issued by the third defendant by email of 30.12.2022 is illegal, null and void and also seeks a consequential permanent injunction to restrain the defendants from in any manner preventing or obstructing the plaintiff's participation in the EGM to be held on 21.01.2023 or on any other date or the plaintiff's use of the facility of the club or his functioning as the Official Handicapper and Measurer (OHM).

2.Oral submissions on behalf of the plaintiff were addressed by Mr.V.Prakash, learned senior counsel, and on behalf of the respondents by Mr.T.N.Rajagopalan, learned counsel.

3.The first contention of Mr.V.Prakash is that the plaintiff has been a long time member of the club and that he is an avid sailor. He pointed out that the plaintiff is currently the OHM and, consequently, a member of the committee of the club. By drawing reference to the email of



14.12.2022, learned senior counsel submitted that the issues raised in the said email by the plaintiff triggered the suspension. In particular, he submitted that the club has steadily moved away from being sports-centric to being commerce-centric.

4.Turning to the events leading to the suspension, he submitted that the plaintiff received an email of 22.12.2022 levelling allegations against him in respect of loans advanced to the club and in respect of the training imparted by the plaintiff to the two individuals named therein. He pointed out that this email was responded to by him on 26.12.2022. In spite of a detailed response, he submitted that the impugned communication was issued to him on 30.12.2022.

5.Mr.V.Prakash invited my attention to the articles of association and bye-laws of the club. With special reference to bye-law 18, he submitted that an order of suspension can be issued only if the committee forms the opinion that one of the four circumstances specified in bye-law 18 occurred and that such suspension should be preceded by a reasonable opportunity to show cause. According to learned senior counsel, the plaintiff did not receive notice for any meeting which preceded the email of 22.12.2022. Indeed, he asserts that no such meeting was held.



Likewise, as regards the order of suspension, he submits that such order of suspension was not pursuant to a decision taken at a meeting of the committee.

6. These contentions were refuted by learned counsel for the respondents. By way of a preliminary objection, learned counsel contended that the suit, as framed, is not maintainable. In order to substantiate the contention, learned counsel invited my attention to bye-law 8 which specifies that the club can sue or be sued in the name of the Honorary Secretary. By referring to paragraph 6 of the affidavit in support of the interim application, he submitted that the assertion therein that there has been no Honorary Secretary for about 2 ½ years is false to the knowledge of the plaintiff. In order to substantiate this contention, he invited my attention to the minutes of the Annual General Meeting held on 30.09.2021 and the list of office bearers of the committee for the period: 2021-2023. Even if a Honorary Secretary was not holding office when the suit was filed, he referred to Section 20 of the Tamil Nadu Societies Registration Act, 1975 (the TN Societies Registration Act) to contend that the suit should have been filed against the committee.

7. In the case at hand, he pointed out that the suit was instituted



against the club represented by its Commodore. Since the society is not a juristic entity, unlike a limited liability company, he submitted that the suit is not maintainable. In support of this contention, he referred to the judgment of the Hon'ble Supreme Court in *Illachi Devi (D) by legal representatives and others v. Jain Society, Protection of Orphans India and others*, 2003 (4) CTC 98, particularly paragraphs 21 to 24 thereof.

8.He also relied on the judgment of this Court in *Society of the Sisters of the Blessed Virgin Mary, Presentation Convent, Madras - 8 v. Madras-e-Bakiyanathus Salihath, Vellore* – 630 001,1990-1-LW 606, particularly paragraph Nos.7 and 8 thereof.

9.By referring on the judgment of the Hon'ble Supreme Court in *Tr.K.Palaniswamy v. M.Shanmugam and others in Civil Appeal No.1392 of 2023*, Judgment dated 23.2.2023, particularly paragraph 30 thereof, he submitted that in the affairs of societies, political parties and the like, considerable latitude is extended and that the court should not ordinarily interfere with the affairs or administration.

10.Upon taking stock of the rival contentions, the first question



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to be examined is whether the suit is not maintainable, as alleged by the defendants, and the implications thereof with regard to the interlocutory applications. There can be no quarrel with the proposition that a society is not a juristic entity in contrast to a limited liability company. It is on account of the nature of a society that the TN Societies Registration Act provides that the property of a registered society should be vested in the committee of the society. Similarly, as regards legal proceedings, Section 20 provides that the society may sue or be sued against through its committee or an authorised officer thereof.

11. In this case, the suit was instituted on or about 19.01.2023.

The admitted position is that the society did not have an Honorary Secretary on that date. Bye-law 8 provides that "the Club can sue or be sued only in the name of Hon. Secretary". Therefore, the question arises as to the manner in which the suit should have been framed. Learned counsel for the defendants relied on Section 20 to contend that the suit should have been instituted against the committee. The suit has been instituted against the Society represented by the Commodore. In addition, the plaintiff has arrayed the Commodore, the Vice Commodore and the Honorary Treasurer as the other defendants. Can it be concluded that the suit is liable to be rejected at this threshold because it was not directed against the committee



in question? In my view, the alleged defect is curable and, therefore, there is no embargo as regards the consideration of the interlocutory applications on that ground.

12.The defendants raised one more preliminary objection, viz., that the bye-laws provide for an alternative remedy. By pointing to bye-law 18 r/w bye-law 31, learned counsel for the defendants submitted that a member is required to raise differences or grievances before the general body of the society before approaching a court of law.

13.As regards this preliminary objection, it should be recognised, at the outset, that the ouster of jurisdiction of a civil court is not to be lightly inferred. Here, the relevant bye-law cannot and does not purport to oust the jurisdiction of court. At best, it may be construed as a provision creating an alternative remedy. Whether such alternative remedy should deter this Court from exercising jurisdiction is the question that falls for consideration. The subject of the suit is the suspension of the plaintiff for a period of three months with effect from 30.12.2022. The purported alternative remedy provided for under bye law 18 read with bye law 31 is for the member concerned to canvass the grievance at the general body meeting. As an individual member, albeit a member of the committee, the



plaintiff is not in a position to convene the general body meeting. Bye-law 31 requires a requisition by not less than 20 members to request the society to convene an extraordinary general body meeting. In this context, I conclude that the alternative remedy provided for in bye-law 18 r/w bye-31 is not efficacious and, therefore, will not deter the Court from considering the interlocutory application.

14.Turning to the merits of the application, the contentions centred around bye-law 18. Bye-law 18 is set out below:

“18.CONDUCT OF MEMBERS:

In the event of the conduct of any members in the Club or outside, being in the opinion of the committee injurious to the prestige of the Club or affects port security or on the happening of any event which in the opinion of the committee would render the continuance of the ember injurious to the prestige and interest and character of the Club, or in the case of any infraction bythe member of any of the Bye-Laws the committee may after giving the concerned member reasonable opportunity to show cause, suspend such member for a period not exceeding three months provided however



that if the committee should consider advisable in the interest of the Club they may call upon him/her to resign or remove him/her from membership by a resolution of the committee passed by not less than eight of its members being agreeable to the same and be effective from the date it is communicated to the said member by post or E-mail and also posted on the Club notice board. Further if a member wishes to resolve his /her differences concerning the R.M.Y.C in a court of law he/she may do so only after bringing up the matter in a General Body meeting. He/she may call for a General Body meeting as per Bye Law No.31 of the bye laws of the Club.”

On examining bye-law 18, it is evident that the committee is empowered to suspend a member. Such suspension requires formation of opinion by the committee as to one or more of the following:

- 1) the conduct of the member is injurious to the prestige of the Club;*
- 2) the conduct of the member affects port security;*
- 3) specific event(s) render the continuance of the*



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member as injurious to the prestige, interest and character of the Club;

4) infraction by the member of any bye-laws.

15.An additional requirement of bye-law 18 is that suspension should be preceded by a reasonable opportunity to show cause.

16.Learned counsel for the defendants contended that the email of 22.12.2022 was preceded by a decision taken with the approval of the majority of the committee members. Therefore, he contended that such decision should not be interfered with merely on the ground that the decision was not taken at a formal meeting of the committee. In this regard, bye-law 23 is relevant. Clause (b) thereof deals with committee meetings and is set out below:

“b.COMMITTEE MEETINGS: The ordinary meetings of the committee shall be held at least once a month by giving four days clear notice. The Honorary Secretary may, whenever he deems it necessary and shall, on the requisition of any four members of the Committee call for special Meetings of the Committee by giving at least four days clear



notice to all members of the Committee. Meetings for the Committee may also be held by teleconference, video conference and the committee members views may also be invited by e-mail for obtaining their opinion on the proposals before the COMMITTEE.”

Clause (b) prescribes that an ordinary meeting of the committee is required to be held at least once a month by giving four days clear notice. It also provides that a special meeting of the committee may be held by giving at least four days clear notice to all the members of the committee. The undisputed position is that there are 12 members of the committee, including the plaintiff. The defendants have placed on record the email issued by about 7 members of the committee with regard to a telephonic discussion on 21.12.2022 regarding the conduct of the plaintiff. Learned counsel for the defendants is correct in contending that the court does not readily interfere with the affairs of a society. Such non-interference is, however, not absolute. In *T.P. Daver v. Lodge Victoria No. 363 S.C. Belgaum and Ors., (1964) 1 SCR 1*, the Hon'ble Supreme Court carved out an exception that interference may be warranted if the affairs of the society are not conducted in accordance with the rules framed by the society concerned. Applying the



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said principle to the factual context, the question for consideration is whether the email from these members with regard to a telephonic conversation on 21.12.2022 may be construed as a committee meeting for the purpose of bye-law 23. The rationale underlying the prescription that decisions should be taken at a meeting is to enable deliberation amongst members on the agenda or subject of the meeting and for a decision to emerge pursuant to such deliberation. From the email placed on record by the defendants, it appears that the telephonic conversation took place on a one-on-one basis. There is no indication whatsoever that a physical or virtual meeting took place where all the members of the committee deliberated on the subject before arriving at a decision. It also appears from the record that the plaintiff was not put on notice of the meeting. It is another matter that the plaintiff could not have voted on any decision if he had been put on notice.

17.As regards the subsequent meeting at which the decision of suspension was taken, learned counsel for the defendants has placed on record the minutes book. The minutes of the meeting held on-line on 30.12.2022 is available therein. Out of the 12 members, it records that 8 members attended the on-line meeting. It further records that the 9th member, Mr.K.Chidambaram, conveyed that he had no comments and the



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10th member, Mr.Ashish Mehta, conveyed that the plaintiff should not be suspended. Once again, it appears that the plaintiff was not put on notice.

Likewise, the 12th member does not appear to have been put on notice.

One more aspect is discernible: there is nothing in the minutes of meeting even to indicate that the members of the committee applied their mind to the plaintiff's response to the show cause. Given the fact that bye-law 18 prescribes a reasonable opportunity to show cause, even for the purpose of suspension, the minutes should have set out some indication that the members of the committee applied their mind to the response from the plaintiff.

18.For the reasons set out, I am of the view that the plaintiff has established a strong *prima facie* case that the relevant bye-laws were not adhered to while taking the impugned actions. I am conscious that orders of suspension are not ordinarily interfered with. It is also been brought to my notice that the plaintiff has completed about two months of the suspension period. Nevertheless, since the record discloses clear infraction of the rules framed by the society for its governance, these applications are disposed of by restraining the respondents from giving any further effect to the order of suspension pending adjudication of the suit. It is, however, made clear that the order of suspension has been interfered



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with purely on procedural grounds of non compliance with the relevant bye-laws and that the merits of the allegations against the plaintiff have not been examined and no opinion is expressed thereon.

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